

**CONTRACT #405-10375**

**GRANT AGREEMENT**

The state of North Dakota, acting through its North Dakota Department of Human Services, Economic Assistance Policy Division (Grantor), has determined the services identified in the Scope of Service paragraph below form an appropriate basis for the expenditure of funds allocated to Grantor.

The Village Family Service Center (Grantee), 1201 25<sup>th</sup> St. South, PO Box 9859, Fargo, ND 58108-9858, proposes to provide those services.

Grantor and Grantee therefore enter into the following:

**1. TERM OF GRANT**

This grant runs from July 1, 2016, through June 30, 2017. This grant will not automatically renew.

**2. SCOPE OF SERVICE**

Grantee shall operate the Alternative to Abortion program statewide. Grantee shall:

1. Promote alternative to abortion services;
2. Inform the public about the Alternative to Abortion Program;
3. Provide a dedicated toll free number to provide available Agencies and locations for individuals needing the services;
4. Contract with existing Agencies and future Agencies throughout the state of North Dakota that provide services other than abortion;
5. Maintain a list of Agencies;
6. Determine the service unit rate paid to Agencies for professionals and paraprofessionals;
7. Receive billing based on service units and service unit rates from Agencies;
8. Make payments to Agencies based on billing;
9. Collect data from Agencies for outcome measures;
10. Develop and identify how positive outcomes will be measured from data collected;
11. Maintain and provide access to a website with alternative-to-abortion information;
12. Identify strategies for continued engagement of women seeking services throughout their pregnancy;
13. Identify how services are preventing women from aborting;
14. Provide quarterly reports to State to include, at a minimum, the following:
  - a. Number of Individuals served
  - b. Services provided to each individual
  - c. Follow-up provided to each individual
  - d. Outcomes of services provided:
    - i. Kept baby
    - ii. Foster care
    - iii. Adoption
    - iv. Aborted (voluntarily or involuntarily)

15. Communicate and receive approval for any changes to the services provided from Grantor.
16. Provide timelines for the following:
  - a. Promotion of Alternative to Abortion Program;
  - b. Availability and administration of the dedicated toll free number;
  - c. Process of facilitation of services and funding involving Agencies;
  - d. Data collection and outcome measures process; and
  - e. Communication process with Grantor.
17. Identify experience in providing counseling services to women who may be pregnant or think they may be pregnant.
18. Identify any innovative ideas relating to the administration of the Alternative to Abortion Program.

### 3. COMPENSATION

Grantor, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by Grantor, shall reimburse Grantee for allowable expenses incurred. "Allowable expenses" are defined by the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards cited under Section 11 of this grant. The total amount paid under this grant may not exceed \$250,000. No funds will be paid for services until they have been provided. Grantee shall submit its request for reimbursement to Grantor monthly. Grantee shall submit its final reimbursement request to Grantor no later than 15 days after the expiration or termination of this grant. Grantor may not pay Grantee until Grantee signs and returns to Grantor the Certification of the 2 CFR Part 200 Informational Guide, which is made a part of this grant by its reference here.

Payment for services under this grant may include federal monies. Anticipated funding at the time this grant is executed is listed below. The funding source of actual payments and the federal program can be verified by contacting DHS' Fiscal Administration Division.

#### Anticipated Funding:

Federal	\$250,000	State	\$
Other	\$	Unknown	\$

Catalog of Federal Domestic Assistance Number 93.558, Department of Health and Human Services, Temporary Assistance for Needy Families.

### 4. TERMINATION

#### a. Termination by Mutual Agreement or Notice

This grant may be terminated at any time by mutual consent of both parties executed in writing, or upon 30-days' written notice by either party, with or without cause.

b. Early Termination in the Public Interest

Grantor is entering into this grant for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this grant ceases to further the public policy of the state of North Dakota, Grantor, in its sole discretion, by written notice to Grantee, may terminate this grant in whole or in part.

c. Termination for Lack of Funding or Authority

Grantor may terminate the whole or any part of this grant, effective upon delivery of written notice to Grantee or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The grant may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this grant or are no longer eligible for the funding proposed for payments authorized by this grant.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this grant, is for any reason denied, revoked, suspended, or not renewed.

Termination of this grant under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause

Grantor may terminate this grant effective upon delivery of written notice to Grantee, or any later date stated in the notice:

- 1) If Grantee fails to provide services required by this grant within the time specified or any extension agreed to by Grantor; or
- 2) If Grantee fails to perform any of the other provisions of this grant, or so fails to pursue the work as to endanger performance of this grant in accordance with its terms.

The rights and remedies of Grantor provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this grant.

5. NONPERFORMANCE

Failure by Grantee to perform the terms of this agreement constitutes a breach of contract and will result in the termination of the agreement. If a breach by Grantee renders the agreement impossible of performance by Grantee and is caused by

circumstances beyond the control of Grantee, and through no fault of Grantee, the agreement will be terminated and Grantor may set off, against any liability or obligations owed to Grantee under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

**6. FORCE MAJEURE**

Grantee shall not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond Grantee's reasonable control, and Grantee gives notice to Grantor immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

**7. GRANTEE'S UNDERSTANDING OF TERM OF FUNDING**

Grantee understands that this grant is a one-time grant, and acknowledges that it has received no assurances that this grant may be extended beyond its expiration date.

**8. GRANTEE ASSURANCES**

Grantee agrees to comply with the applicable assurances set forth in the Grantee Assurances found in Attachment A, which is part of this grant.

**9. AUTHORITY TO CONTRACT**

Grantee may not contract for or on behalf of, or incur obligations on behalf of, Grantor. Grantee may subcontract with qualified providers of services, provided that any subcontract acknowledges the binding nature of this grant, and incorporates this grant, together with its attachments as appropriate. Grantee agrees to be solely responsible for the performance of any subcontractor. Grantee may not assign or otherwise transfer or delegate any right or duty without Grantor's express written consent.

**10. INDEPENDENT ENTITY**

Grantee shall perform as an independent entity under this grant. Grantee, its employees, agents, or representatives are not employees of Grantor for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this grant may be construed to represent the creation of an employer/employee relationship between Grantor and Grantee. Grantee will retain sole and absolute discretion in the judgment of the manner and means of carrying out Grantee's activities and responsibilities under this grant.

**11. AUDIT RESPONSIBILITY AND EXPENSE ALLOWABILITY**

Grantee agrees to keep financial records necessary to fully disclose the complete financial status of the grant. Grantee must submit documentation supporting requests for reimbursement for review by Grantor or its agents, upon request. If

Grantee has expended federal funds (when considering all sources) during Grantee's fiscal year at the amount specified in 2 CFR Part 200 Uniform Grant Guidance, which is made a part of this grant by reference here, that CFR must be followed pursuant to the Single Audit Act of 1984, Public Law 98-502; and the Single Audit Act Amendments of 1998, Public Law 104-158.

Additionally, Grantee agrees to spend all federal assistance received from Grantor in accordance with applicable laws and regulations from the 2 CFR Part 200 Informational Guide, which is made a part of this grant by reference here.

**12. RETENTION OF RECORDS**

Grantee agrees to retain records for at least three years following completion of this grant or, if subject to audit, from the date the audit is completed and closed, whichever occurs later. Program records must be maintained for a period of six years or until an audit is completed and closed, whichever occurs later. All records, regardless of physical form, and the accounting practices and procedures of Grantee relevant to this grant are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors and Grantee must be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

**13. CONTINGENT LIABILITY**

During the term of this grant, and for three years after this grant expires or is terminated, Grantee agrees to reimburse Grantor for any claims submitted by Grantor for federal financial participation in the cost of this grant to the extent those claims are disallowed by any federal agency for failure on the part of Grantee to comply with this grant or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Grantee prompt written notice of any disallowed claims subject to reimbursement by Grantee. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

**14. INDEMNITY**

Grantee agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Grantee to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Grantee also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Grantee in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

## **15. INSURANCE**

Grantee shall secure and keep in force during the term of this agreement and Grantee shall require all subcontractors, prior to commencement of an agreement between Grantee and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Grantee.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a. a "Waiver of Subrogation" waiving any right to recover the insurance company may have against the State;
  - b. a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
  - c. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;

- d. a provision that Grantee's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Grantee's insurance and shall not contribute with it;
  - e. cross liability/severability of interest for all policies and endorsements;
  - f. the legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - g. the insolvency or bankruptcy of the insured Grantee shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Grantee from meeting the retention limit under the policy.
- 6) The Grantee shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

**16. NOTICE**

Any notice or other communication required under this grant must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

The Village Family Service Center  
1201 25<sup>th</sup> St. South, PO Box 9859  
Fargo, ND 58108-9856

OR

ND Department of Human Services  
Economic Assistance Policy Division  
600 E. Boulevard Avenue, Dept. 325  
Bismarck, ND 58505-0250

Notice provided under this provision does not meet the notice requirements for monetary claims against Grantor found at North Dakota Century Code § 32-12.2-04.

**17. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS**

This grant constitutes the entire grant between Grantee and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this grant. No alteration, amendment, or modification of this grant is effective unless it is reduced to writing, signed by the parties, and attached to the grant.

If any inconsistency exists between this grant and other provisions of collateral contractual grants which are made a part of this grant by reference or otherwise, the provisions of this grant control.

**18. SEVERABILITY**

If any term of this grant is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if

possible, the rights and obligations of the parties are to be construed and enforced as if the grant does not contain the illegal or unenforceable term.

**19. APPLICABLE LAW AND VENUE**

This grant is governed by and construed according to the laws of the State of North Dakota. Any action to enforce this grant must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

**20. ASSIGNMENT**

Neither party may assign this grant or the party's rights under this grant without the written approval of the other party. Approval to assign may not be unreasonably withheld. This grant is equally binding on the respective parties, and their successors and assigns.

**21. SPOILATION – PRESERVATION OF EVIDENCE**

Grantee shall promptly notify Grantor of all potential claims that arise or result from this grant. Grantee shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect the evidence, including the scene of an accident.

**22. WORKS FOR HIRE**

Grantee acknowledges that all work(s) under this grant is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Grantor all rights and interests Grantee may have in the work(s) it prepares under this grant, including any right to derivative use of the work(s). All software and related materials developed by Grantee in performance of this agreement for Grantor shall be the sole property of Grantor, and Grantee hereby assigns and transfers all its right, title, and interest therein to Grantor. Grantee shall execute all necessary documents to enable Grantor to protect Grantor's intellectual property rights under this section.

**23. WORK PRODUCT, EQUIPMENT, AND MATERIALS**

All work product, equipment, and materials created or purchased under this grant belong to Grantor and must be delivered to Grantor at Grantor's request upon expiration or termination of this grant.

**24. CONFIDENTIAL INFORMATION**

Grantee shall not use or disclose any information it receives from Grantor under this grant that Grantor has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this grant or as authorized in advance by Grantor. Grantor shall not disclose any information it receives from Grantee that Grantee has previously identified as

confidential and that Grantor determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in N.D.C.C. § 44-04-18. The duty of Grantor and Grantee to maintain confidentiality of information under this section continues beyond the term of this grant, including any extensions or renewals.

**25. COMPLIANCE WITH PUBLIC RECORDS LAWS**

Grantee understands that, except for disclosures prohibited in this grant, Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records obtained or generated by Grantee under this grant, except for records that are confidential under this grant, may be open to the public upon request under certain circumstances under the North Dakota open records law. Grantee agrees to contact Grantor immediately upon receiving a request for information under the open records law and to comply with Grantor's instructions on how to respond to the request.

**26. ATTORNEY FEES**

If a lawsuit is filed by Grantor to obtain performance due under this grant, and Grantor is the prevailing party, Grantee shall pay Grantor's reasonable attorney fees and costs in connection with the lawsuit except when prohibited by N.D.C.C. § 28-26-04.

**27. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

Grantor does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. Grantor does not waive any right to a jury trial.

**28. NONDISCRIMINATION – COMPLIANCE WITH LAWS**

Grantee shall comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. Grantee shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Grantee also shall have and keep current at all times during the term of this grant all licenses and permits required by law.

**29. DIRECT AND INDIRECT RATES**

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The terms of this grant provide for an indirect rate. This rate is limited to the rate approved for the time frame the direct expenditures were incurred. Grantee may claim such direct and indirect costs provided they are consistent with the 2 CFR Part 200 Informational Guide.

THE VILLAGE FAMILY SERVICE CENTER

By:

DATE

its President and CEO

45-0226423

Grantee's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By: Maggie D. Anderson

DATE

MAGGIE D. ANDERSON  
EXECUTIVE DIRECTOR

By: Cheryl Fitzgerald

DATE

CHERYL FITZGERALD  
CONTRACT OFFICER

Approved for form and content

ATTACHMENT A

GRANTEE ASSURANCES

- A. In connection with furnishing supplies or performing work under this grant, persons who contract with or receive funds to provide services to Grantor are obligated and agrees to comply with all local, state, and federal laws, regulations and executive orders related to the performance of this grant, including the following: Fair Labor Standards Act, the North Dakota Human Rights Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Drug-free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, and the Pro-Children Act of 1994.
- B. Unless otherwise authorized by federal law, the charges to be made by Grantee do not include costs financed by federal monies other than those generated by this grant.
- C. By signing this grant, Grantee certifies that neither Grantee, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by any Department or Agency of the State or Federal Government.
- D. Grantee must be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by N.D.C.C. § 54-44.4-09.
- E. Grantee assures that:
  - 1) No Federal funds from this agreement will be paid by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - 2) If any grant funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, Grantee agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - 3) Grantee shall require that the language of the Grantee Assurances in this Attachment be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall comply with these Grantee Assurances.

CONTRACT # 405-10375  
AMENDMENT A

AMENDMENT TO GRANT AGREEMENT

On or about July 1, 2016, the state of North Dakota, acting through its North Dakota Department of Human Services, Economic Assistance Policy Division (Grantor) and The Village Family Service Center (Grantee) entered into a grant agreement to operate the Alternative to Abortion program statewide.

The parties agree that certain parts of that agreement should be changed:

1. The Term of Grant is changed from July 1, 2016, through June 30, 2017, to July 1, 2016, through June 30, 2019.
2. The Compensation section is amended to increase the total amount paid under the grant from \$250,000 to \$850,000, an increase of \$600,000. For the period July 1, 2017, to June 30, 2019, total payment may not exceed \$600,000.

The funding source for the increase is anticipated as follows:

Federal	\$600,000	State	\$
Other	\$	Unknown	\$

Catalog of Federal Domestic Assistance Number 93.558, Department of Health and Human Services, Temporary Assistance for Needy Families.

Federal Award Identification Number: 1701NDTANF.

Federal Award Date: October 6, 2016

This award is not for Research and Development.

All other terms and conditions remain as previously written.

THE VILLAGE FAMILY SERVICE CENTER

By HSFV 06/01/2017  
Its President/CEO DATE

STATE OF NORTH DAKOTA  
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By CDJ 6-13-17  
CHRISTOPHER D. JONES  
EXECUTIVE DIRECTOR

By CF 6-9-17  
CHERYL FITZGERALD  
CONTRACT OFFICER

Approved for form and content